IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11374 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HARSHADBHAI @ RAJUBHAI CHANDULAL CHAVDA
Versus
POLICE COMMISSIONER, AHMEDABAD AND OTHERS

==========

Appearance :
MR ASHISH M DAGLI for the petitioner

MR ND GOHIL, AGP for the respondents

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 02/08/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order dated 13.02.2006 by which he is detained under the

Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act] as an immoral traffic offender.

In the grounds of detention, there is a reference to a solitary case pending against the petitioner which is registered at Vatva Police Station being C.R.No.III 0006 of 2006 dated 9.1.2006. Considering the seriousness of the said case which is filed under Sections 4, 5, 6, 8 and 9 of the Prevention of Immoral Traffic Act and considering the statements of witnesses the said detention order is passed.

Learned advocate for the petitioner submitted that there is a solitary criminal case against the detenu and therefore it cannot be said that he is a habitual offender.

However, learned AGP Mr Gohil submitted that the learned Single Judge of this Court considered the aforesaid aspect and found that even if a solitary case is there, since the statements of independent witnesses were recorded, it would attract the provisions of Section 2(g) of the Act and therefore the petition is required to be rejected.

Learned advocate for the petitioner submitted that the detenu was detained and was in judicial custody and till today he has not presented any application for bail, yet, the detaining authority has come to the conclusion that the petitioner will continue his activity even after his release on bail from the judicial custody. In this connection, learned advocate for the petitioner has relied upon a recent decision of the Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

"13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).

> ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).""

14.We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the

> appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

In the instant case there is nothing on record which shows as to on what basis the detaining authority has come to the conclusion that the detenu is likely to be released on bail. In the instant case even the detenu has not preferred any application for bail. The detaining authority has therefore without any basis reached the conclusion that the detenu is likely to continue his activity even after his release on bail from the judicial custody. I am not expressing any opinion in detail about the merits of the case. However, suffice it to say that the conclusion of the detaining authority about the aforesaid aspect of the petitioner being released on bail is based on no material.

On the aforesaid ground, the petition is required to be released from the detention. Hence, the petition is allowed. The impugned order

of detention dated 13.02.2006 passed by the Commissioner of Police, Ahmedabad City is set aside. The detenu – Harshadbhai @ Rajubhai Chandulal Chavda is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

(P. B. MAJMUDAR, J.)

*mohd